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Via e mail

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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Regulation Z - Proposed Rule, Docket # R-1167
Regulation B – Proposed Rule, Docket # R-1168

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposed changes to Regulations Z and B (the "Proposed Rules") of the Board of Governors of the Federal Reserve System (the "Board"), implementing the Truth in Lending Act ("TILA") and the Equal Credit Opportunity Act ("ECOA"). Household Bank (SB), N.A. ("Household") respectfully provides comments to the Proposed Rules. Regulation Z and B are collectively referred to as the "Regulations."

Household is a top ten issuer of MasterCard® and Visa® credit cards in the United States. Principal programs in the United States are The GM Card® and the Union Plus® card program. The GM Card enables customers to earn discounts on the purchase or lease of a new General Motors vehicle. The Union Plus program provides benefits and services to members of more than 60 labor unions affiliated with the AFL-CIO. Under our Household Bank® and Orchard Bank® brands, Household also offers specialized credit cards to consumers under served by traditional providers in the United States.

Background

The Board is proposing to amend the Regulations to provide a uniform definition of the term "clear and conspicuous" among the Board's regulations generally. Specifically, the Board is proposing to incorporate into the Regulations the relatively new "clear and conspicuous" standard from Regulation P, which

implements the privacy disclosure requirements of the Gramm-Leach-Bliley Act. The stated intention of this revision is to "help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services." In addition, the preamble expresses the belief that "consistency among the regulations should facilitate compliance by institutions."

Household fully supports ongoing industry and regulatory efforts to provide useable, clear information to consumers regarding financial products. However, we fear that the changes contained in the Proposed Rules may fail to advance these shared goals. Moreover, because these changes could mandate the revision of virtually every document, advertisement, or page on a financial institution's web site that are sent or used by consumers, the costs to the industry are potentially enormous, and should well exceed the Board's estimate under the Paperwork Reduction Act that "the revisions would not increase the paperwork burden of creditors." These compliance costs are compounded by the potential litigation exposure that could result from the elimination of decades of jurisprudence concerning disclosure standards under the Board's affected regulations. While costs alone may not constitute sufficient reason to withdraw a proposal that is intended to enhance consumer protection, we are also concerned that the Proposed Rules lack documentation or other explanatory information that demonstrates how the new standard will meet those intentions, or how it will facilitate compliance by affected financial institutions. In this regard, and as further discussed below, we respectfully disagree with the assertion that the standard expressed in Regulation P "articulates with greater precision" the duty to provide disclosures that consumers will notice and understand. With these comments in mind, we suggest that the Proposed Rules be withdrawn in their entirety, and that any specific regulatory concerns regarding consumer disclosures be addressed on a case by case basis, as the Board has done in the past.[1]

Our comments focus on the clear and conspicuous requirements of the Proposed Rules, with an additional comment on the revision to Section 226.27 regarding language disclosures.

[1] See, e.g., 65 Fed. Reg. 58, 903 (October 3, 2000) (Final Rule implementing changes to Regulation Z's definition of "clear and conspicuous" as it applies to information in the Schumer Box.)

Clear and Conspicuous Comments

1. Use of the Regulation P "clear and conspicuous" standard is an inappropriate standard for the Regulations.

Regulation P privacy disclosures are typically presented as a stand alone document while disclosures under the Regulations are generally integrated with other information, such as state disclosures, contractual provisions and other explanatory information to assist the consumer in understanding the credit products features and terms. Further, the privacy statement is typically the same for all financial products issued by a single creditor. Contrast this to a single product (i.e. a credit card, a home equity loan, a first mortgage, etc.) of a creditor which may have different price points and different terms depending on the target market or creditworthiness of the consumer. Each variation of the product potentially may have a different disclosure. Then consider the numerous products that a creditor may have, and the frequent changes to product features in response to market competition. It quickly becomes quite apparent that the effort involved in achieving and maintaining compliance with the proposed "clear and conspicuous" standard for numerous products is vastly greater and more costly than the effort and cost required to maintain a single privacy statement. The Regulation P standards may be appropriate for a privacy statement but they are not appropriate for credit documents.

We also note that the Board and other federal banking agencies, as well as the Federal Trade Commission, the Commodity Futures Trading Commission and the Securities and Exchange Commission have published an advance notice of proposed rulemaking requesting public comment on ways to improve privacy notices provided to consumers by financial institutions. In light of this action it would be premature and inappropriate for the Board to adopted Regulation P's "clear and conspicuous" standard and "examples."

2. Applying the Regulation P standards to the Proposed Rules would result in additional litigation.

The current clear and conspicuous standard has been in existence for many years. Over that period of time consumers have become accustomed to the manner in which financial products are marketed and how disclosures are presented. Additionally, changes to the presentation of disclosures have been gradual[2], at least when juxtaposed with the Proposed Rules. Prior amendments to the Regulations did not radically change the presentation of disclosures and

[2] For example the Board's October 3, 2000 final rule amending Regulation Z made revisions in how cost information is to be presented in credit card applications. *Id*. at 58,903. These were minor changes in contrast to what is being proposed.

instead made subtle changes to improve the conspicuousness of certain enumerated disclosures. The Proposed Rules would seek to radically revise the presentation of disclosures and increase their length by requiring the use of headings, boldface or italics, and other enumerated formatting devices to call attention to every "required disclosure," an undefined term.

Credit card agreements have been designed so that they contain headings to identify major topics of interest to the consumer. To qualify for a safe harbor under the Proposed Regulations, creditors would be required to add headings for relatively minor required disclosures. Further, it is unclear whether retaining headings for non-required items--which may in fact facilitate the consumer's review of the credit card agreement--would negate the requirement to "call attention" to required disclosures. Even if emphasizing non-required disclosures in not a violation of the Proposed Rules, the net result will simply be more clutter that may frustrate consumers.[3]

The vague standards concerning when disclosures are "clear and conspicuous," together with the unclear examples and the lack of clarity defining "required disclosure," will lead to more litigation. In fact, as a direct result of failing to provide clear examples and clarity, some courts may be amenable and even inclined to interpret the proposed standards in ways the Board did not intend and in ways that creditors cannot predict.[4]

It is important to note that Regulation P does not provide for a private right of action if a creditor fails to correctly provide the "clear and conspicuous" disclosure mandated under it. This is in sharp contrast to the Regulations where consumers can bring a private action and a creditor could be held strictly liable for failing to comply with the proposed "clear and conspicuous" standard. This could expose the creditor to a significant risk of liability and the creditor could be required to pay statutory damages even if the disclosures were facially accurate.

Further, state laws contain clear and conspicuous disclosure requirements.[5] Creditors will be forced to consider whether the proposed clear and conspicuous

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[3] Other examples the may lead to consumer frustration and confusion: 1) The credit line and minimum due are not required disclosures on a periodic statement but the previous balance and new balance are--requiring the previous balance and new balance to be conspicuous would be confusing and potentially misleading; and 2) The Regulation B provision concerning consideration of alimony and child support is essentially a footnote as are the "trigger term" disclosures under Regulation Z—the logical flow of a document would be disrupted if it had to be designed to draw attention first to these terms.

[4] Consider for example the Sixth Circuit Court of Appeal's decision in the Pfennig case.

[5] California Civil Code Section 1748.9 requires credit card issuers that extend credit through a preprinted check to disclose on the front of an attachment that is affixed to the check certain disclosures "in clear and conspicuous language."

standards, if adopted, need to be applied to these state disclosures and the potential consequences if the state law disclosures do not satisfy the federal standard. Any state disclosure that did not satisfy the federal standard could be challenged by the plaintiff's bar because the federal standard, unlike the state law standard, sets forth criteria (which we believe are subjective and inappropriate), for determining whether a disclosure is clear and conspicuous. To create a safe harbor from potential liability creditors would at a minimum need to consider how the state disclosures measure up under the federal standards and, arguably, ensure that the state disclosures satisfy the federal standards. We strongly urge the Board to refrain from giving the plaintiff's bar additional ammunition to challenge the legality of disclosures.

We do not believe the Board intended to increase the potential civil liability of creditors, but the new "clear and conspicuous" standard would require creditors to revamp their entire array of consumer disclosures to try and match the formatting of Regulation P disclosures to reduce their liability. We note that the Board did not identify any problems with the current standards that would justify such a radical change, particularly when it is not clear that implementing the proposed standards to all communications would actually benefit consumers. We believe that existing unfair and deceptive trade practice laws, as well as the current disclosure standards of the Regulations, provide sufficient protection for consumers and provide appropriate penalties for non-complaint creditors.

3. <u>The Proposed Rules would diminish the meaning of "clear and conspicuous</u>."

We believe that the Board's proposal requiring all disclosures to be "clear and conspicuous," will fail to assist consumers in determining which disclosures are really important. Rather, consumers and creditors will be left in an Orwellian conundrum where all disclosures are created equal but some disclosures are created more equal than others. Quite simply, the result may be that certain important contractual and other legal information which, because it does not fall under one of the Board's regulations, may need to be relegated outside of the Regulation P world of bullet points and boldface type. Alternatively, if all disclosures become "clear and conspicuous" then the true value of clear and conspicuous disclosures has no real meaning and, accordingly, the concept should be abandoned in favor of specific requirements relating to specific disclosures.

4. <u>The proposed "clear and conspicuous" standards would prove costly and potential difficult to implement</u>.

In addition, as mentioned above, the Proposed Rule would require the use of headings, boldface or italics, and other enumerated formatting devices to call attention to every "required disclosure" and require the disclosures to be in a minimum type size. In is very likely that these formatting requirements will require software and hardware changes to achieve this capability. Further, requiring a minimum type size for all disclosures will dramatically increase the length of disclosures.[6] Not only will the increased length increase the cost to creditors (and ultimately to the consumer), it will also make disclosures more challenging to read by having to page through, although in larger type, a longer or multiple page document. Experience tells us that lengthy or multiple page documents do not interest consumers and requiring disclosures to be in a minimum type size, resulting in a longer document, will turn consumers off rather than enhancing their experience and comprehension.

Preliminary estimates indicate that our cost would double to prepare and print "clear and conspicuous" disclosures under the proposed standards for our MasterCard and Visa credit card business--this cost alone will be millions of dollars per year. In addition, there would be additional postage costs, paper costs, equipment costs and the cost of dealing with consumer's questions. Significant costs to creditors without any real benefit to consumers.

In conclusion we respectfully suggest that the existing interpretation of "clear and conspicuous" satisfies the legislative intent to clearly provide consumers the information they need to comparison shop for credit. The current standard also provides an existing body of law that provides legal certainty, or at least as much certainty than can be hoped for in the current environment, for creditors who endeavor to follow the regulatory requirements. If the Board believes that certain disclosures are not being provided in a "clear and conspicuous" manner, then these specific situations should be addressed individually or at the examiner level. The Board will increase the burden on creditors as discussed above if the proposed "clear and conspicuous" standards are adopted.

Language Disclosure Comment

We support the Board's revision to Section 226.27 but believe that it does not fully address the conflicts created by state language disclosure requirements. Section 226.27 states that "[i]f a creditor provides initial disclosures in a language other that English, subsequent disclosures need not be in that other language." California Civil Code Section 1632(b) [operative July 1, 2004] however, requires "[a]ny person…who negotiates in Spanish, Chinese, Tagalog, Vietnamese or

[6] For example applying the new type size standards increases the length of our cardholder agreement from a 4 panel document to a 7 panel document and increases the length of our direct mail solicitation by 1 full page of just disclosures.

Korean, orally or in writing…[a loan of extension of credit], shall deliver to the other party…prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement." This requirement is applicable to any subsequent document that makes" substantial changes in the rights of the obligations of the parties," such as a change in terms notice. California Civil Code Section 1632(g)

Section 226.27 does not address the language used to negotiate a contract. We believe may creditors negotiate transactions in a language other than English and the documents provided to the consumer are in English. The Board's proposed revisions to Section 226.27 seem to support this assumption. Yet, California law would require that where negotiations took place in one of the enumerated foreign languages, English language documents would need to be translated into that language and a copy of the translated documents would need to be provided. Not only will this add to the expense of a transaction, it will also double the amount of paperwork leaving the consumer with in some cases a confusing assortment of documents to sort through and interpret. We recognize that the Proposed Rules may not be the appropriate forum to address this issue but wanted to bring it to the attention of the Board.

Paperwork Reduction Act

In this section of the Proposed Rules, the Board estimates that the proposed definitional changes will create no annual cost burden on the banks affected by the changes. We respectfully disagree. As written, the new language effectively includes minimum typeface sizes, increased margins, and other requirements that would likely lengthen every printed disclosure made to consumers. Added length requires added paper at an additional cost. Additional paper creates additional weight, which requires additional postage. It is quite possible, therefore, that the proposed changes could result in costs to the industry measuring in the billions of dollars. And it is highly likely that a large part of that cost will ultimately be passed on to consumers.

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We appreciate the opportunity to comment on this proposal.

Sincerely,
/s/

David C. Bouc
Associate General Counsel